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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

XILING CHEN,

Plaintiff,

v.

ALBERTO GONZALES, Attorney General of
the United States; MICHAEL CHERTOFF,
Secretary of the Department of Homeland
Security; EMILIO GONZALES, Director of
United States Citizenship & Immigration
Services; ROBERT MEULLER, Director of the
Federal Bureau of Investigations; GERARD
HEINAUER, Director of the Nebraska Service
Center,

Defendants.

No. C 07-4698 PVT

ANSWER

Defendants hereby submit their answer to Plaintiff's Complaint for Mandamus.

The initial paragraph consists of Plaintiff's characterizations of the lawsuit for which no answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny that they have improperly withheld action on Plaintiffs application to her detriment.

PARTIES

1. Defendants admit the allegations in Paragraph One.

2. Defendants admit the allegations in Paragraph Two with the exception that Michael B.

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1 Mukasey is the Attorney General of the United States.

2 3. Defendants admit the allegations in Paragraph Three.

3 4. Defendants admit the allegations in Paragraph Four.

4 5. Defendants admit the allegations in Paragraph Five.

5 6. Defendants admit the allegations in Paragraph Six.

6 **JURISDICTION**

7 7. Paragraph Seven consists of Plaintiff's allegation regarding jurisdiction, to which no
8 responsive pleading is required; however, to the extent a responsive pleading is deemed necessary,
9 Defendants deny the allegations in this paragraph.

10 8. Paragraph Eight consists of Plaintiff's allegation regarding jurisdiction, to which no
11 responsive pleading is required.

12 9. Paragraph Nine consists of Plaintiff's allegation regarding costs and attorney fees, to which
13 no responsive pleading is required.

14 **VENUE**

15 10. Paragraph Ten consists of Plaintiff's allegations regarding venue, to which no responsive
16 pleading is required.

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18 11. Defendants deny the allegations in this paragraph.

19 **FACTUAL ALLEGATIONS**

20 12. Defendants admit the allegations in Paragraph Twelve.

21 13. Defendants admit that Plaintiff was first fingerprinted on June 3, 2004.

22 14. Defendants admit the allegations in Paragraph Fourteen.

23 15. Defendants admit the allegations in Paragraph Fifteen.

24 16. Defendants admit that Mr. Zhenru Ding was granted adjustment of status on January 18,
25 2005.

26 17. Defendants are without sufficient information to admit or deny the allegations in
27 Paragraph Seventeen.

28 18. Defendants are without sufficient information to admit or deny the allegations in

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Paragraph Eighteen.

19. Defendants are without sufficient information to admit or deny the allegations in Paragraph Nineteen.

20. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twenty.

21. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twenty-One.

22. Defendants deny the allegations in Paragraph Twenty-Two.

23. Defendants deny the allegations in Paragraph Twenty-Three.

24. Defendants deny the allegations in Paragraph Twenty-Four. Plaintiff chose to apply for two travel documents.

25. Defendants deny the allegations in Paragraph Twenty-Five.

26. Defendants deny the allegations in Paragraph Twenty-Six.

27. Defendants deny the allegations in Paragraph Twenty-Seven.

28. Defendants deny the allegations in Paragraph Twenty-Eight.

REQUEST FOR RELIEF

The remaining allegations consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

FIRST AFFIRMATIVE DEFENSE

The court lacks jurisdiction over the subject matter of this action.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with

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1 justification, and pursuant to authority.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 Defendants are processing the application referred to in the Complaint to the extent possible at
4 this time. Accordingly, no relief as prayed for is warranted.

5 WHEREFORE, Defendants pray for relief as follows:

6 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's complaint
7 with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief as it deems
8 just and proper under the circumstances.

9 Dated: November 19, 2007

Respectfully submitted,

10 SCOTT N. SCHOOLS
11 United States Attorney

12 /s/
13 ILA C. DEISS
14 Assistant United States Attorney
15 Attorneys for Defendants
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